

**THIRD AMENDMENT TO
COOPERATIVE AGREEMENT (C-11759) BETWEEN THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
AND
COLLIER COUNTY, FLORIDA**

THIS THIRD AMENDMENT TO COOPERATIVE AGREEMENT (C-11759) BETWEEN THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT AND COLLIER COUNTY, FLORIDA ("Third Amendment"), is entered into as of the _____ day of _____, 2012 by and between **SOUTH FLORIDA WATER MANAGEMENT DISTRICT, a government entity created by Chapter 373, Florida Statutes** (hereinafter referred to as "DISTRICT"), and **COLLIER COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter referred to as "COUNTY").

WITNESSETH:

WHEREAS, DISTRICT and COUNTY entered into a certain Cooperative Agreement dated October 13, 2000, designated by the District as Contract C-11759 (the "Original Agreement");

WHEREAS, pursuant to that certain First Amendment to Cooperative Agreement (C-11759) Between the South Florida Water Management District and Collier County Florida dated February 10, 2011 ("First Amendment"), DISTRICT and COUNTY agreed to prevent the Original Agreement from lapsing and terminating, in accordance with paragraph 1 of the Agreement, by agreeing to an extension of the termination date set forth in the Original Agreement from February 28, 2011 to May 31, 2011;

WHEREAS, pursuant to that certain Second Amendment to Cooperative Agreement (C-11759) Between the South Florida Water Management District and Collier County Florida dated May 10th 2011 ("Second Amendment"), DISTRICT and COUNTY further extended the termination date of the Agreement from May 31, 2011 to September 30, 2012 (the Original Agreement as modified, amended and extended by the First Amendment and the Second Amendment is herein referred to as the "Agreement");

WHEREAS, DISTRICT and COUNTY desire to further extend the termination date of the Agreement from September 30, 2012 to September 30, 2024, and to modify the provisions relating to termination;

WHEREAS, DISTRICT and COUNTY desire to modify and amend the Agreement to provide specific special terms, conditions and provisions with respect to the C-1 Connector Canal Right of Way, portions of the Golden Gate Main Canal Right of Way and portions of the Miller Canal Right of Way; and

WHEREAS, the defined terms in this Third Amendment shall have the same definitions as defined in the Agreement;

NOW THEREFORE for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, DISTRICT and COUNTY hereby agree to modify, amend and extend the Agreement as follows:

1. The foregoing recitals are true and correct and are hereby incorporated herein by reference.

2. Paragraph 1 of the Agreement is hereby modified, amended and replaced with the following:

1. Unless extended or earlier terminated, this **AGREEMENT** shall continue until September 30, 2024, and may be renewed upon mutual agreement of the parties. Each party shall provide notice of its intent to renew or not renew this **AGREEMENT** to the other party on or before September 1, 2023. In the event that the parties do not mutually agree to an extended renewal period, this **AGREEMENT** shall automatically lapse, terminate, and expire on September 30, 2024. Subject to the terms, conditions and provisions of this **AGREEMENT** the **DISTRICT** shall be the public agency in Collier County, Florida generally responsible for the control, operation and maintenance of the watercourses listed in Exhibit "A", and depicted on Exhibit "B", both of which are attached hereto and made a part of this **AGREEMENT**, (except as set forth in paragraph 3 of this Third Amendment). In the event either party decides not to renew this **AGREEMENT**, DISTRICT agrees to assist COUNTY to transition into the operation and maintenance of the watercourses which are the subject of the **AGREEMENT**.

3. Notwithstanding anything contained in the Agreement, or this Third Amendment to the contrary, DISTRICT and COUNTY hereby agree to the following specific special terms, conditions, and provisions applicable to the C-1 Connector Canal Right of Way, portions of the Golden Gate Main Canal Right of Way and portions of the Miller Canal Right of Way:

a. C-1 Connector Canal Right of Way. A strip of land in Sections 11 and 12, Township 49 South, Range 27 East, Collier County, Florida, generally depicted on Schedule "1" attached hereto and made a part hereof, and more particularly described as follows:

All that drainage easement, 60 feet in width, commonly referred to as "C-1 Connector Canal Right of Way", lying along the South lines of Golden Gate Estates Unit No. 48, Plat Book 5, Page 78 and Golden Gate Estates, Unit No. 51, Plat Book 5, Page 84. All plats recorded in Collier County, Florida, Public Records. (Hereinafter referred to as the "C-1 Connector Canal Right of Way").

(1) DISTRICT hereby transfers all of its right, title, interest and control in the C-1 Connector Canal Right of Way to COUNTY.

(2) The DISTRICT will “Un-adopt” the C-1 Connector Canal Right of Way as a “Work of the District”, upon which the C-1 Connector Canal Right of Way shall no longer be subject to the provisions of Chapter 40E-6 of the Florida Administrative Code, and the DISTRICT shall no longer have jurisdictional authority over permitting and authorizing uses of the C-1 Connector Canal Right of Way.

(3) Upon passing a resolution “Un-adopting” the C-1 Connector Canal Right of Way as a “Work of the District”, DISTRICT Right of Way Permit No. 10267 in favor of the School District of Collier County concerning a culvert bridge crossing across the C-1 Connector Canal Right of Way shall be void and have no further force or effect. In addition, the culvert bridge crossings across the C-1 Connector Canal Right of Way located at the southern terminus of 10th, 18th, 20th, and 22nd Streets Southeast shall be considered pre-existing non-conforming structures and shall be allowed to remain in their current location and condition until such time that: (a) the affected property owners desire to upgrade the crossing(s), or (b) the condition of the crossing(s) deteriorates to an unacceptable level as determined by the COUNTY and requires replacement. Upon the occurrence of either condition (a) or condition (b) referenced in the preceding sentence, the modification, replacement and/or reconstruction shall conform to the COUNTY’s Right of Way permitting criteria applicable at the time of such modification, replacement and/or reconstruction, and shall accommodate a flowage capacity of at least 250 cfs.

(4) COUNTY shall have full authority, control and jurisdiction with respect to authorizing uses with respect to the C-1 Connector Canal Right of Way, including but not limited to authorizing vehicular crossings and authorizing vehicular use of the overbank areas. COUNTY agrees that it will not authorize any new uses with respect to the C-1 Connector Canal Right of Way which do not accommodate a flowage capacity of at least 250 cfs. COUNTY agrees to notify the DISTRICT of all uses authorized by the COUNTY with respect to the C-1 Connector Canal Right of Way.

(5) With respect to the C-1 Connector Canal, the DISTRICT agrees to continue to provide: (i) aquatic plant control, (ii) maintenance shoal removal, and (iii) canal side bank maintenance (if operation of the system is impaired), to the extent the performance of such maintenance is reasonably practical and does not conflict with uses authorized by the COUNTY. The COUNTY shall be responsible for removing flow obstructions not authorized by the COUNTY.

(6) The DISTRICT agrees to notify the COUNTY of any uses or flow obstructions with respect to the C-1 Connector Canal Right of Way which

impede the DISTRICT'S ability to perform the maintenance referenced in the first sentence of subparagraph (5) above or which is inconsistent with the flowage capacity criteria specified in subparagraphs (3) and (4) above.

(7) In order to perform the maintenance activities referenced in subparagraph (5) above, the DISTRICT shall have the right of access, ingress and egress with respect to the C-1 Connector Canal Right of Way.

b. Portion of Golden Gate Main Canal Right of Way. A strip of land in Sections 10 and 11, Township 49 South, Range 27 East, Collier County, Florida, generally depicted on Schedule "1" attached hereto and made a part hereof, and more particularly described as follows:

All that part of a drainage easement, 140 feet in width, commonly referred to as "Golden Gate Main Canal Right of Way", lying North of the South line of Golden Gate Estates, Unit 13, Plat Book 7, Page 72, Collier County, Florida, Public Records and South of the South top of bank of said Golden Gate Main Canal. (Hereinafter referred to as the "Golden Gate Main South Overbank").

(1) DISTRICT hereby transfers all of its right, title, interest and control in the Golden Gate Main South Overbank to COUNTY.

(2) The DISTRICT will "Un-adopt" the Golden Gate Main South Overbank as a "Work of the District", upon which the Golden Gate Main South Overbank shall no longer be subject to the provisions of Chapter 40E-6 of the Florida Administrative Code, and the DISTRICT shall no longer have jurisdictional authority over permitting and authorizing uses of the Golden Gate Main South Overbank.

(3) COUNTY shall have full authority, control and jurisdiction with respect to authorizing uses with respect to the Golden Gate Main South Overbank, including but not limited to authorizing vehicular use of the Golden Gate Main South Overbank.

(4) DISTRICT shall have no maintenance obligations with respect to the Golden Gate Main South Overbank.

(5) DISTRICT shall have the right of access, ingress and egress with respect to the Golden Gate Main South Overbank.

c. Portion of Miller Canal Right of Way. A strip of land in Section 12, Township 49 South, Range 27 East and Sections 7, 18, 19 and 30 Township 49 South, Range 28 East, Collier County, Florida, generally depicted on Schedule

“1” attached hereto and made a part hereof, and more particularly described as follows:

All that part of a drainage easement 95 feet in width, commonly referred to as “Miller Canal Right of Way”, lying North of the South lines of Golden Gate Estates, Unit 51, Plat Book 5, Page 84 and Golden Gate Estates, Unit 82, Plat Book 5, Page 21 and South of the South top of bank of said Miller Canal.

Together With;

All that part of said drainage easement lying East of the West lines of said Golden Gate Estates, Unit No.82, Golden Gates Estates, Unit No. 87, Plat Book 5, Page 26, and Golden Gate Estates, Unit No. 88, Plat Book 5, Page 27 and West of the West top of bank of said Miller Canal and North of the South line of 28th Avenue SE. All plats recorded in Collier County, Florida, Public Records. (Hereinafter referred to as the “Miller Canal South/West Overbank”).

(1) DISTRICT hereby transfers all of its right, title, interest and control in the Miller Canal South/West Overbank to COUNTY.

(2) The DISTRICT will “Un-adopt” the Miller Canal South/West Overbank as a “Work of the District”, upon which the Miller Canal South/West Overbank shall no longer be subject to the provisions of Chapter 40E-6 of the Florida Administrative Code, and the DISTRICT shall no longer have jurisdictional authority over permitting and authorizing uses of the Miller Canal South/West Overbank.

(3) COUNTY shall have full authority, control and jurisdiction with respect to authorizing uses with respect to the Miller Canal South/West Overbank, including but not limited to authorizing vehicular use of the Miller Canal South/West Overbank.

(4) DISTRICT shall have no maintenance obligations with respect to the Miller Canal South/West Overbank.

(5) DISTRICT shall have the right of access, ingress and egress with respect to the Miller Canal South/West Overbank.

4. The following provision is hereby added as paragraph 29. to the Agreement:

29. Notwithstanding anything to the contrary, either party to this Agreement shall have the right to terminate this Agreement for any reason

and upon such termination, all right, title, interest, control, operation and maintenance of the watercourses/canal rights of way, together with all structures, as set forth in Exhibit "A" to this Agreement, and as modified by any supplement thereto ("Works and Structures"), shall be relinquished and transferred to the County. The party exercising the termination option shall give to the other party written notice that the Works and Structures are to be transferred to the County. In order to coincide with the budget year, unless otherwise agreed to, final transfer and termination of this Agreement shall be effective the second October 1st following receipt of the notice of termination. In the event of such termination, both parties shall be relieved of any and all future obligations under this Agreement as of the effective date of the termination, including but not limited to, lost revenues and consequential damages.

5. The Agreement, as modified, amended and extended by this Third Amendment is hereby ratified, confirmed and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals as of the date and year first above written.

**SOUTH FLORIDA WATER MANAGEMENT
DISTRICT, BY ITS GOVERNING BOARD**

ATTEST:

(Seal)

By: _____

Its _____

Executed by DISTRICT on: _____

ATTEST:

COLLIER COUNTY, FLORIDA

(Seal)

By: _____

Its _____

Executed by COUNTY on: _____